



Sen. Don Harmon

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LRB097 19332 WGH 67519 a

1 AMENDMENT TO SENATE BILL 3813

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 3813 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Uniform Commercial Code is amended by  
5 changing Sections 9-510 and 9-516 and by adding Section 9-501.1  
6 as follows:

7 (810 ILCS 5/9-501.1 new)

8 Sec. 9-501.1. Fraudulent records.

9 (a) No person shall cause to be communicated to the filing  
10 office for filing a false record the person knows or reasonably  
11 should know:

12 (1) is not authorized or permitted under Section 9-509,  
13 9-708, or 9-808 of this Article;

14 (2) is not related to a valid existing or potential  
15 commercial or financial transaction, an existing  
16 agricultural or other lien, or a judgment of a court of

1 competent jurisdiction; and

2 (3) is filed with the intent to harass or defraud the  
3 person identified as debtor in the record or any other  
4 person.

5 (b) A person who violates subsection (a) is guilty of a  
6 Class A misdemeanor for a first offense and a Class 4 felony  
7 for a second or subsequent offense.

8 (c) A person who violates subsection (a) shall be liable in  
9 a civil action to each injured person for:

10 (1) the greater of the actual damages caused by the  
11 violation or up to \$10,000 in lieu of actual damages;

12 (2) reasonable attorney's fees;

13 (3) court costs and other related expenses of bringing  
14 an action, including reasonable investigative expenses;  
15 and

16 (4) in the discretion of the court, exemplary damages  
17 in an amount determined by the court or jury.

18 (d) A person identified as debtor in a filed record the  
19 person believes was caused to be communicated to the filing  
20 office in violation of subsection (a) may, under penalty of  
21 perjury, file with the Secretary of State an affidavit to that  
22 effect. The Secretary of State shall adopt and make available a  
23 form affidavit for use under this Section.

24 (e) Upon receipt of an affidavit filed under this Section,  
25 or upon administrative action by the Secretary of State, the  
26 Secretary of State shall communicate to the secured party of

1 record on the record to which the affidavit or administrative  
2 action relates and to the person that communicated the record  
3 to the filing office, if different and known to the office, a  
4 request for additional documentation supporting the  
5 effectiveness of the record. The Department of Business  
6 Services of the Office of the Secretary of State and the Office  
7 of the General Counsel shall review all such documentation  
8 received within 30 days after the first request for additional  
9 documentation is sent. The Secretary of State may terminate the  
10 record effective 30 days after the first request for additional  
11 documentation is sent if it has a reasonable basis for  
12 concluding that the record was communicated to the filing  
13 office in violation of subsection (a).

14 The Secretary of State may initiate an administrative  
15 action under the first paragraph of this subsection (e) with  
16 regard to a filed record if it has reason to believe, from  
17 information contained in the record or obtained from the person  
18 that communicated the record to the filing office, that the  
19 record was communicated to the filing office in violation of  
20 subsection (a). The Secretary of State may give heightened  
21 scrutiny to a record that indicates that the debtor is a  
22 transmitting utility or that indicates that the transaction to  
23 which the record relates is a manufactured-home transaction or  
24 a public-finance transaction.

25 (f) The Secretary of State shall not charge a fee to file  
26 an affidavit under this Section and shall not return any fee

1 paid for filing a record terminated under this Section.

2 (g) The Secretary of State shall promptly communicate to  
3 the secured party of record a notice of the termination of a  
4 record under subsection (e). A secured party of record that  
5 believes in good faith that the record was not communicated to  
6 the filing office in violation of subsection (a) may file an  
7 action to require that the record be reinstated by the filing  
8 office. A person that communicated a record to the filing  
9 office that the filing office rejected in reliance on Section  
10 9-516(b) (3.5), who believes in good faith that the record was  
11 not communicated to the filing office in violation of Section  
12 9-516(b) (3.5), may file an action to require that the record be  
13 accepted by the filing office.

14 (h) If a court or tribunal in an action under this Section  
15 determines that a record terminated under this Section or  
16 rejected in reliance on Section 9-516(b) (3.5) should be  
17 reinstated or accepted, the court or tribunal shall provide a  
18 copy of its order to that effect to the Secretary of State. On  
19 receipt of an order reinstating a terminated record, the  
20 Secretary of State shall refile the record along with a notice  
21 indicating that the record was refiled pursuant to this Section  
22 and its initial filing date. On receipt of an order requiring  
23 that a rejected record be accepted, the Secretary of State  
24 shall promptly file the record along with a notice indicating  
25 that the record was filed pursuant to this Section and the date  
26 on which it was communicated for filing. A rejected record that

1 is filed pursuant to an order of a court or tribunal shall have  
2 the effect described in Section 9-516(d) for a record the  
3 filing office refuses to accept for a reason other than one set  
4 forth in Section 9-516(b).

5 (i) A terminated record that is refiled under subsection  
6 (h) is effective as a filed record from the initial filing  
7 date. If the period of effectiveness of a refiled record would  
8 have lapsed during the period of termination, the secured party  
9 may file a continuation statement within 30 days after the  
10 record is refiled and the continuation statement shall have the  
11 same effect as if it had been filed during the 6-month period  
12 described in Section 9-515(d). A refiled record shall be  
13 considered never to have been ineffective against all persons  
14 and for all purposes except that it shall not be effective as  
15 against a purchaser of the collateral that gave value in  
16 reasonable reliance on the absence of the record from the  
17 files.

18 (j) Neither the filing office nor any of its employees  
19 shall incur liability for the termination or failure to  
20 terminate a record under this Section or for the refusal to  
21 accept a record for filing in the lawful performance of the  
22 duties of the office or employee.

23 (k) This Section does not apply to a record communicated to  
24 the filing office by a regulated financial institution or by a  
25 representative of a regulated financial institution except  
26 that the Secretary of State may request from the secured party

1 of record on the record or from the person that communicated  
2 the record to the filing office, if different and known to the  
3 office, additional documentation supporting that the record  
4 was communicated to the filing office by a regulated financial  
5 institution or by a representative of a regulated financial  
6 institution. The term "regulated financial institution" means  
7 a financial institution subject to regulatory oversight or  
8 examination by a State or federal agency and includes banks,  
9 savings banks, savings associations, building and loan  
10 associations, credit unions, consumer finance companies,  
11 industrial banks, industrial loan companies, insurance  
12 companies, investment companies, investment funds, installment  
13 sellers, mortgage servicers, sales finance companies, and  
14 leasing companies.

15 (1) If a record was communicated to the filing office for  
16 filing before the effective date of this Section and its  
17 communication would have constituted a violation of subsection  
18 (a) if it had occurred on or after the effective date of the  
19 Section: (i) subsections (b) and (c) are not applicable; and  
20 (ii) the other subsections of this Section are applicable.

21 (810 ILCS 5/9-510)

22 Sec. 9-510. Effectiveness of filed record.

23 (a) Filed record effective if authorized. A filed record is  
24 effective only to the extent that it was filed by a person that  
25 may file it under Section 9-509.

1 (b) Authorization by one secured party of record. A record  
2 authorized by one secured party of record does not affect the  
3 financing statement with respect to another secured party of  
4 record.

5 (c) Continuation statement not timely filed. A  
6 continuation statement that is not filed within the six-month  
7 period prescribed by Section 9-515(d) is ineffective.

8 (d) A filed record ceases to be effective if the filing  
9 office terminates the record pursuant to Section 9-501.1.

10 (Source: P.A. 91-893, eff. 7-1-01.)

11 (810 ILCS 5/9-516)

12 Sec. 9-516. What constitutes filing; effectiveness of  
13 filing.

14 (a) What constitutes filing. Except as otherwise provided  
15 in subsection (b), communication of a record to a filing office  
16 and tender of the filing fee or acceptance of the record by the  
17 filing office constitutes filing.

18 (b) Refusal to accept record; filing does not occur. Filing  
19 does not occur with respect to a record that a filing office  
20 refuses to accept because:

21 (1) the record is not communicated by a method or  
22 medium of communication authorized by the filing office;

23 (2) an amount equal to or greater than the applicable  
24 filing fee is not tendered;

25 (3) the filing office is unable to index the record

1           because:

2                   (A) in the case of an initial financing statement,  
3           the record does not provide a name for the debtor;

4                   (B) in the case of an amendment or correction  
5           statement, the record:

6                           (i) does not identify the initial financing  
7                           statement as required by Section 9-512 or 9-518, as  
8                           applicable; ~~or~~

9                           (ii) identifies an initial financing statement  
10                          whose effectiveness has lapsed under Section  
11                          9-515; or

12                           (iii) identifies an initial financing  
13                          statement which was terminated pursuant to Section  
14                          9-501.1;

15                   (C) in the case of an initial financing statement  
16           that provides the name of a debtor identified as an  
17           individual or an amendment that provides a name of a  
18           debtor identified as an individual which was not  
19           previously provided in the financing statement to  
20           which the record relates, the record does not identify  
21           the debtor's last name;

22                   (D) in the case of a record filed or recorded in  
23           the filing office described in Section 9-501(a)(1),  
24           the record does not provide a sufficient description of  
25           the real property to which it relates; or

26                   (E) in the case of a record submitted to the filing

1 office described in Section 9-501(a)(1), the filing  
2 office has reason to believe, from information  
3 contained in the record or from the person that  
4 communicated the record to the office, that: (i) if the  
5 record indicates that the debtor is a transmitting  
6 utility, the debtor does not meet the definition of a  
7 transmitting utility as described in Section  
8 9-102(a)(81); (ii) if the record indicates that the  
9 transaction relating to the record is a  
10 manufactured-home transaction, the transaction does  
11 not meet the definition of a manufactured-home  
12 transaction as described in Section 9-102(a)(54); or  
13 (iii) if the record indicates that the transaction  
14 relating to the record is a public-finance  
15 transaction, the transaction does not meet the  
16 definition of a public-finance transaction as  
17 described in Section 9-102(a)(67); ~~9-501(b), the~~  
18 ~~debtor does not meet the definition of a transmitting~~  
19 ~~utility as described in Section 9-102(a)(80);~~

20 (3.5) in the case of an initial financing statement or  
21 an amendment, if the filing office believes in good faith  
22 that the record was communicated to the filing office in  
23 violation of Section 9-501.1(a); ~~a document submitted for~~  
24 ~~filing is being filed for the purpose of defrauding any~~  
25 ~~person or harassing any person in the performance of duties~~  
26 ~~as a public servant;~~

1           (4) in the case of an initial financing statement or an  
2 amendment that adds a secured party of record, the record  
3 does not provide a name and mailing address for the secured  
4 party of record;

5           (5) in the case of an initial financing statement or an  
6 amendment that provides a name of a debtor which was not  
7 previously provided in the financing statement to which the  
8 amendment relates, the record does not:

9                   (A) provide a mailing address for the debtor;

10                   (B) indicate whether the debtor is an individual or  
11 an organization; or

12                   (C) if the financing statement indicates that the  
13 debtor is an organization, provide:

14                           (i) a type of organization for the debtor;

15                           (ii) a jurisdiction of organization for the  
16 debtor; or

17                           (iii) an organizational identification number  
18 for the debtor or indicate that the debtor has  
19 none;

20           (6) in the case of an assignment reflected in an  
21 initial financing statement under Section 9-514(a) or an  
22 amendment filed under Section 9-514(b), the record does not  
23 provide a name and mailing address for the assignee; or

24           (7) in the case of a continuation statement, the record  
25 is not filed within the six-month period prescribed by  
26 Section 9-515(d).

1 (c) Rules applicable to subsection (b). For purposes of  
2 subsection (b):

3 (1) a record does not provide information if the filing  
4 office is unable to read or decipher the information; and

5 (2) a record that does not indicate that it is an  
6 amendment or identify an initial financing statement to  
7 which it relates, as required by Section 9-512, 9-514, or  
8 9-518, is an initial financing statement.

9 (d) Refusal to accept record; record effective as filed  
10 record. A record that is communicated to the filing office with  
11 tender of the filing fee, but which the filing office refuses  
12 to accept for a reason other than one set forth in subsection  
13 (b), is effective as a filed record except as against a  
14 purchaser of the collateral which gives value in reasonable  
15 reliance upon the absence of the record from the files.

16 (e) The Secretary of State may refuse to accept a record  
17 for filing under subdivision (b) (3) (E) or (b) (3.5) only if the  
18 refusal is approved by the Department of Business Services of  
19 the Secretary of State and the General Counsel to the Secretary  
20 of State.

21 (Source: P.A. 95-446, eff. 1-1-08.)

22 Section 99. Effective date. This Act takes effect upon  
23 becoming law."